

## 46 Am. Jur. 2d Judges § 161

American Jurisprudence, Second Edition | February 2022 Update

### Judges

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### IX. Disqualification to Act in Particular Case

#### B. Grounds for Disqualification

##### 5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

##### c. Prior Participation in or Connection with Case as Attorney as Grounds for Disqualification

## § 161. Judge's former role as prosecutor as grounds for disqualification

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### West's Key Number Digest

West's Key Number Digest, [Judges](#)  [47\(1\)](#), [47\(2\)](#)

### A.L.R. Library

[Prior Representation or Activity as Prosecuting Attorney as Disqualifying Judge from Sitting or Acting in Criminal Case](#),  
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### Forms

Forms relating to disqualification of judge due to bias or prejudice, generally, see Am. Jur. Pleading and Practice Forms,  
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A number of courts have taken the position that a judge who had been a district attorney at the time that the defendant was prosecuted for an offense is disqualified, in general, from sitting as a judge in a further proceeding involving the same defendant in the same offense, often on the ground that a statutory provision renders the judge disqualified, despite the fact that the

judge was not at all involved in the actual prosecution.<sup>1</sup> However, other courts have reached the conclusion that a judge is not disqualified if he or she did not appear personally or participate in the action,<sup>2</sup> often reasoning that disqualification on such grounds would hamper the smooth operation of judicial administration by causing too many disqualifications on technical grounds.<sup>3</sup> A judge who was a former prosecutor is not disqualified from hearing a criminal case if the crime occurred<sup>4</sup> or the information was filed<sup>5</sup> after the judge was appointed.

**Reminder:**

The Code of Judicial Conduct provides that the judge should disqualify him- or herself in any proceeding in which the judge served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;<sup>6</sup> and such rules are embodied in the federal statute regarding the disqualification of judges.<sup>7</sup>

One who has personally prosecuted or been actively engaged in any way in the prosecution and conviction of one accused of a crime is disqualified from sitting as judge in a matter involving that conviction, even in the absence of a showing of bias.<sup>8</sup> The involvement of multiple actors and the passage of time do not relieve a former prosecutor, who is now a judge, of the duty to withdraw from a case in which the judge had significant involvement in making a critical decision as a prosecutor, in order to ensure the neutrality of the judicial process in determining the consequences that his or her own earlier, critical decision may have set in motion.<sup>9</sup>

While it has been found that a judge should disqualify him- or herself in a criminal matter which was pending in his or her office when he or she was prosecutor, whether or not he or she actually participated in the investigation or prosecution of the case, or had actual knowledge of it on the basis that as the prior head of such office, as the judge would have had the overall responsibility for the conduct of the case,<sup>10</sup> there is also authority that a judge, who had been a district attorney in a mere supervisory or administrative capacity at the time that a defendant was prosecuted for an offense, should not be disqualified, since the judge had never handled the case or acted as counsel,<sup>11</sup> and disqualification on such technical grounds would hamper the smooth operation of judicial administration.<sup>12</sup>

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**Footnotes**

- 1 Ex parte Sanders, 659 So. 2d 1036 (Ala. Crim. App. 1995); State ex rel. Corbin v. Superior Court of State of Ariz., In and For Maricopa County, 155 Ariz. 560, 748 P.2d 1184 (1987); Small v. Com., 617 S.W.2d 61 (Ky. Ct. App. 1981); State v. Williams, 788 So. 2d 515 (La. Ct. App. 4th Cir. 2001); Frierson v. State, 606 So. 2d 604 (Miss. 1992).
- 2 Mangum v. Hargett, 67 F.3d 80 (5th Cir. 1995); State v. Stewart, 65 So. 3d 771 (La. Ct. App. 5th Cir. 2011), writ denied, 78 So. 3d 140 (La. 2012); People v. Delongchamps, 103 Mich. App. 151, 302 N.W.2d 626 (1981); West v. State, 131 So. 3d 583 (Miss. Ct. App. 2013); Rideaux v. State, 498 S.W.3d 634 (Tex. App. Houston 14th Dist. 2016).

A judge was not required to recuse himself in a criminal case based on his prior employment with the prosecutor's office when the office was handling the defendant's case, where there was no allegation that the judge, while still a prosecutor, was personally involved in some aspect of the criminal matter or served in a supervisory role over another lawyer while that lawyer was personally involved in some aspect of the criminal matter. *Post v. State*, 298 Ga. 241, 779 S.E.2d 624 (2015).

*State ex rel. Corbin v. Superior Court of State of Ariz., In and For Maricopa County*, 155 Ariz. 560, 748 P.2d 1184 (1987).

*Birge v. State*, 53 Ala. App. 524, 301 So. 2d 286 (Crim. App. 1974); *Keel v. State*, 552 P.2d 155 (Alaska 1976); *People v. Thomas*, 8 Cal. 3d 518, 105 Cal. Rptr. 366, 503 P.2d 1374 (1972).

*Com. v. Darush*, 501 Pa. 15, 459 A.2d 727 (1983).

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*Calvert v. State*, 498 N.E.2d 105 (Ind. Ct. App. 1986); *Rice v. State*, 134 So. 3d 292 (Miss. 2014); *State v. Tucker*, 264 N.J. Super. 549, 625 A.2d 34 (App. Div. 1993); *Rideaux v. State*, 498 S.W.3d 634 (Tex. App. Houston 14th Dist. 2016).

As to bias or prejudice as a disqualifying factor, generally, see §§ 123 to 144.

*Williams v. Pennsylvania*, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016).

*State v. McNamara*, 212 N.J. Super. 102, 514 A.2d 63 (App. Div. 1986).

*People v. Thomas*, 199 Ill. App. 3d 79, 145 Ill. Dec. 344, 556 N.E.2d 1246 (2d Dist. 1990).

*Turner v. State*, 573 So. 2d 657 (Miss. 1990).

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